

VZCZCXRO8979
RR RUEHLN RUEHVK RUEHYG
DE RUEHSI #0109/01 0231333
ZNR UUUUU ZZH
R 231333Z JAN 08
FM AMEMBASSY TBILISI
TO RUEHC/SECSTATE WASHDC 8656
INFO RUEAWJA/DOJ WASHDC
RUCNCIS/CIS COLLECTIVE

UNCLAS SECTION 01 OF 03 TBILISI 000109

SIPDIS

SIPDIS

STATE FOR INL/AAE, EUR/ACE, EUR/CAC
DOJ FOR OPDAT (LEHMANN/NEWMCOMBE)

E.O. 12958: N/A

TAGS: [SNAR](#) [PGOV](#) [PHUM](#) [KCRM](#) [KJUS](#) [GG](#)

SUBJECT: GEORGIA'S LEGAL EAGLES PROSECUTE ELECTION CRIMES

¶1. Summary: For the first time in its history, Georgia's Office of Public Prosecution Service (OPP) charged individuals with committing election crimes. U.S.-trained OPP prosecutors charged that two individuals, during the January 5, 2008, election, cast fraudulent ballots. To prepare the OPP for the elections, Department of Justice/Office of Overseas Prosecutorial Development, Assistance and Training (DOJ/OPDAT) and the Federal Bureau of Investigation (FBI) election crimes experts trained 50 OPP prosecutors and investigators on effective methods for investigating and prosecuting election crimes. For two days, they identified typical election crimes, discussed investigative techniques, and explored the importance of collecting evidence early in the prosecution. Armed with this information, OPP prosecutors and investigators responded to election-day complaints and have, for the first time in Georgia's history, charged two individuals with election crimes. Although these cases must proceed through the court system, simply charging these individuals is a significant step in the direction of truly free and fair elections. The challenge for the upcoming parliamentary elections will be to help address more sophisticated election irregularities, such as campaign finance, and to develop productive working relationships with the Georgian Young Lawyers Association (GYLA) and other domestic organizations that monitor the elections and receive citizen complaints.

Take It, To the Limit . . .

¶2. In prior elections, the OPP received complaints about criminal activity. These complaints included allegations of ballot box stuffing, fraudulently signing the election rolls, and forcibly stealing the ballot boxes. The OPP limited its investigations to counting the number of ballots cast to determine if they corresponded to the individuals registered to vote. Additionally, they examined the voting rolls to determine if someone forged the signatures. Finally, they unsuccessfully tried to identify the individuals involved in the ballot box heists. Unfortunately, none of these investigations ever resulted in any charges against the culprits.

The New Kid in Town - - Learning How to
Prosecute An Election Crime

¶3. The January 5, 2008, election offered a new opportunity for the OPP. A competitive election offered Georgian voters an opportunity to freely choose their President, but also afforded criminals an opportunity to interfere with the voting process, including casting fraudulent ballots. In view of the latter, the DOJ/OPDAT RLA and the FBI Legatt seized upon the opportunity presented by the Presidential election to help the OPP increase its capacity to prosecute election crimes. Although Georgia criminalizes bribing voters, casting forged ballots, and using false identification, OPP

prosecutors and investigators had never charged anyone with any of those election crimes. The investigators claimed that they lacked the knowledge necessary to investigate such crimes. For example, they understood that people cast fraudulent ballots and forged voting rolls, but they were unsure as to the kind of evidence necessary to collect or the witnesses to interview in order to prove the case in court. Moreover, the prosecutors naively suggested that people would not be able to commit election crimes as a result of the Central Election Committee's (CEC) efforts to purge the voter rolls of ineligible voters and Georgia's requirement that people present photograph identification prior to obtaining a ballot. In short, after meeting with the prosecutors and the investigators, it became clear that a practical primer on best practices in investigating and prosecuting election crimes would be extremely beneficial for Georgian law enforcement. Such a seminar would focus on explaining likely election crime scenarios, identifying the evidence that should be collected, and helping the investigators develop techniques to prosecute these cases.

¶4. On December 13-14, 2007, Georgian prosecutors, investigators, and U.S. experts examined how to investigate and prosecute a variety of election crimes. First, Assistant United States Attorney (AUSA) Hal Goldsmith described a fraudulent voting scheme from the U.S. in which an election official forged voter signatures and fraudulently cast ballots. AUSA Goldsmith explained that an election judge waited until the end of the day then forged signatures of people who had not voted and gave fraudulent ballots for others to cast. The Georgians agreed that a similar situation could happen in Georgia. As such, the discussions moved to what evidence was necessary to prosecute a person for such conduct and how to secure the evidence.

¶5. The U.S. experts explained that before interviewing the victims, the police removed them from the scene. This was important because it allowed the victims to explain the facts while they were fresh in

TBILISI 00000109 002 OF 003

their memory but eliminated potential interference from the press or the criminal's associates, and prevented the suspect from learning that he was under investigation. Moreover, after the police identified the criminal, they returned to the polling place, removed him, and interviewed him at the police station. They also secured other evidence, including the pen the suspect used to forge signatures, and notified officials that they would collect the voting rolls and other items after the election. This accomplished several key goals. By securing the evidence early in the process, law enforcement officials prevented the suspect or his associates from destroying material evidence. Criminals committing election crimes depend on the election's infrequency and speed to destroy the evidence necessary to prosecute. Consequently, law enforcement officials must act quickly to preserve the necessary evidence. Moreover, by removing the suspect from the polling station or notifying him that he was a suspect, the police prohibited him from concocting a story or manipulating the evidence to support the story.

¶6. FBI Special Agent Michael Elliott and the Georgian prosecutors and investigators examined how law enforcement officials act rapidly to secure evidence, remove the suspect from the polling station, and interview the victims and other witnesses. Special Agent Elliott and AUSA Goldsmith both mentioned the importance of cooperation among law enforcement agencies. For example, the creation of an election-day task force, composed of several law enforcement agencies, to rapidly respond to election crime complaints has proven successful in many countries. The Georgian prosecutors and investigators indicated that their law prohibits them from creating a task force without a court order until a crime is committed and law enforcement initiates an investigation. However, they also indicated that nothing prohibited them from informally initiating contacts with necessary task force members. For example, they agreed that the law does not prevent them from alerting local law enforcement officials in each region to include them in a task force if a crime were to occur in that region. They also agreed that they could identify points of contact at the various ministries to include in a task force to investigate an election crime. In other words, while the prosecutors and investigators could not formally

create a task force, they could create an investigative body that could be activated upon the receipt of an election crime complaint.

¶7. Two additional election crime scenarios were discussed. First, the Georgians analyzed a situation in which political parties bribed individuals to vote in their candidate's favor and identified the evidence needed to successfully prosecute this crime. They discussed using cooperating undercover witnesses, which are allowed under Georgian law, in such cases to obtain incriminating statements from those engaged in criminal activity. Indeed, undercover witnesses may be able to document a criminal bragging that he "purchased" a certain number of votes. This is powerful evidence for the prosecution during a trial. They also considered using undercover law enforcement officials to document bribery. The AUSA explained how he used law enforcement officers to pose as individuals who would cast a fraudulent vote in exchange for money. The undercover officers used a hidden microphone to record their conversations with those who offered them money for votes while other officers videotaped these transactions from a nearby vehicle.

¶8. Finally, the Georgian prosecutors and investigators also discussed efforts to fraudulently inflate the voting rolls with their U.S. counterparts. AUSA Goldsmith described a scenario in which American volunteers, claiming to register individuals, falsely filled out voting applications in order to create fictitious individuals for whom others might cast fraudulent votes. Here, the evidence necessary for a successful prosecution would be the registration cards that the volunteers submitted, proof that the people for whom the registration cards were submitted did not exist, and, if possible, statements from the volunteers admitting that they falsely submitted these items.

¶9. The prosecutors and the investigators found the bribery scenario plausible. Historically, some political parties have paid individuals to vote for the party's candidate or purchased a voter's identification card to be used by another on election-day. The Georgians, though, did not believe that inflating the voter rolls would be possible because the CEC had taken steps to prevent this action. Nevertheless, the Georgians agreed that people might have lied to the CEC representatives concerning who lived in various residences. Moreover, since individuals might not be in Georgia on January 5, 2008, the Georgians agreed that unscrupulous individuals might try to cast votes for such absentee citizens. Ultimately, the Georgians conceded that, notwithstanding the CEC's efforts, individuals could inflate the voter rolls and fraudulently cast ballots.

Desperado, Why Don't You Come to Your Senses

TBILISI 00000109 003 OF 003

¶10. Armed with this information, Georgian prosecutors and investigators awaited complaints on January 5, 2008. Based on citizen complaints, two individuals, for the first time in the OPP's history, will be prosecuted for election crimes - namely, the casting of fraudulent ballots. Specifically, the OPP has charged one individual with violating the prohibition against participating in an election using another person's identification or a false document. According to the charge, an eyewitness saw the defendant drop several forged ballots into a ballot box and tried to detain him. The defendant broke free from the observer, and was subsequently arrested. The police learned the suspect's identity, questioned the witnesses and the suspect on January 5, 2008, and subsequently charged him. The OPP has also charged another individual with casting more than one ballot in violation of Georgia's criminal code. Again, the police interviewed the witnesses and the suspect on January 5, 2008. The witnesses confirmed that they observed the suspect cast a ballot early in the morning and cast a second ballot later in the evening. The OPP did not charge either individual until after the election.

¶11. These charges are significant for two reasons. First, they represent the first time in Georgia's history that the prosecution

has charged individuals with election crimes. Charging individuals with election crimes demonstrates that the government takes these types of crimes seriously. It will invest its limited funds and resources to prosecute these crimes. As such, Georgian citizens should vote with greater confidence knowing that the GOG will make every effort to ensure that these votes will not be diluted by individuals casting fraudulent ballots. Second, the swiftness with which the prosecutors and the investigators responded to the complaints demonstrates that the two-day seminar was effective. The U.S. experts highlighted the need to secure the evidence necessary to prosecute election related crimes quickly given that such evidence is routinely destroyed right after the election. They also emphasized the need to quickly identify the culprit and obtain a statement from him, if any, in order to prevent him from destroying critical evidence or concocting a story that would have some factual support. Here, Georgian prosecutors and the investigators demonstrated that they had learned from the experiences their U.S. colleagues shared with them. They responded to the complaint on election-day, spoke with the relevant witnesses and secured statements from them, and identified the suspects and obtained statements from them. Moreover, the prosecutors exercised restraint in that they did not remove the fraudulent ballots from the voting box because they could not identify them. Additionally, they waited to charge the defendants until after the election in order to avoid claims that they attempted to influence the election's outcome.

¶12. Finally, and most critically, Georgian law enforcement initiated a working partnership with GYLA and other indigenous NGOs that received complaints from voters and monitors similar to those that resulted in these election crime charges. Indeed, the work of Georgian and international monitors revealed that other types of election crimes may have been committed in the run up to the election and on election day. These include illegal campaign financing, something that the both the U.S. and European democracies have recently had to confront, polling station intimidation, and, post-election, fraudulent ballot counting. This also underscores the importance of the GOG's continued dedication to enhancing the Georgian prosecutors and investigators' knowledge and skill level so that they are prepared for the upcoming parliamentary elections.

The Long Run - - How Charging Election Crimes
Improves the Rule of Law

¶13. Comment. The January 5, 2008, Presidential election was the first competitive election in Georgia's history. In order for Georgians to have faith in current and future elections, they must believe that the government will enforce the law and prevent people from diluting the value of legitimate votes through criminality. The OPP's maiden efforts to prosecute election crimes should strengthen the public's faith in not only the knowledge and skills of Georgian law enforcement, but also their determination to ensure fair elections in Georgia. Honest citizens now have concrete proof that the OPP will not tolerate efforts to wrongfully influence the election. Further, in anticipation of the upcoming parliamentary elections, Georgian law enforcement must further develop its election crime prosecution sophistication in order to address some of the more sophisticated election fraud - - e.g., campaign finance and other illegal funding schemes - - that allegedly occurred during the January 5th elections. Both DOJ/OPDAT and the FBI stand ready to assist the Georgians with this task.

TEFFT